

APPENDIX 23—MOU BETWEEN BLM AND WWDC CONCERNING HIGH SAVERY DAM AND RESERVOIR PROJECT

BLM MOU No. WY-030-03-05-073

To define and clarify the management roles and responsibilities of the BLM and WWDC for certain public lands near to or adjacent to the High Savery Dam and Reservoir Project.

BACKGROUND: The State of Wyoming through the Water Development Commission (WWDC) received a Section 404 permit from the U.S. Army Corps of Engineers on December 20, 2000, to construct the Little Snake Supplemental Water Supply Project, as the High Savery Dam and Reservoir alternative, hereafter referred to as the High Savery Dam and Reservoir Project. The proposed dam is located on Savery Creek in southern Carbon County, Wyoming. Savery Creek is a tributary to the Little Snake River, which flows into the Yampa River in Colorado. The dam's primary purpose is to provide approximately 12,000 acre-feet of supplemental irrigation water for hay production along Savery Creek and the Little Snake River, primarily during July, August, and September. As a condition of the Section 404 permit, the WWDC is to create a total of 32 acres of wetlands as mitigation for wetlands inundated or filled by the project. Approximately 17.51 acres of wetlands will be created on public land managed by the BLM. The WWDC is also to construct 17 in-stream erosion control structures as part of the Section 404 requirements. These structures are located in close proximity to the created wetlands and will help control stream entrenchment and lateral movement. The WWDC received right-of-way grant WYW-151862 on April 2, 2001, allowing the WWDC to create the wetlands and to construct the erosion control structures. The wetlands and structures are to be maintained for the life of the project, which is projected to be 100 years.

PURPOSE: The purpose of this Memorandum of Understanding (MOU) is to define and clarify the management roles and responsibilities of the BLM and the WWDC for public lands described as:

- T. 15 N., R. 88 W., 6th P.M., Carbon County, Wyoming
- Section 2: That portion of lots 14 and 15 west of the centerline of Carbon County Road 401;
- Section 10: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
- Section 11: That portion of lots 2 and 5 west of the centerline of Carbon County Road 401, NE $\frac{1}{4}$ NW $\frac{1}{4}$;
- Section 14: That portion of lots 4, 5, 6 west of the centerline of Carbon County Road 401, that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ west of the centerline of Carbon County Road 401;
- Section 16: Lots 1, 2;
- Section 17: Lots 4, 5, 6, 7, 8, 9, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
- Section 18: Lot 19;
- Section 19: Lots 5, 12, 13, and 16.

See map A23-1.

AUTHORITY: This MOU is made and entered into by and between the BLM and the WWDC in accordance with the following authorities:

Title II of the Federal Lands Policy and Management Act of October 21, 1976 (90 Stat. 2747, 43 USC 1712); Legislation for the High Savery Dam and Reservoir Project, Ch. 2, 2001, Wyo. Sess. Laws.

AREAS OF COOPERATION:

Responsibilities of the BLM: The BLM will have overall management responsibility for the public lands addressed in this MOU. All management decisions will be coordinated with the WWDC.

Responsibilities of the WWDC: The WWDC will be responsible for obtaining all the required rights-of-way to construct the project on public lands and will be responsible for the operation and maintenance of the wetlands and erosion control structures in T. 15 N., R. 88 W., 6th P.M., Carbon County, Wyoming, section 2: that portion of lots 14, 15 west of the centerline of Carbon County Road 401; section 10: NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$; section 11: that portion of lots 2 and 5 west of the centerline of Carbon County Road 401, NE $\frac{1}{4}$ NW $\frac{1}{4}$; section 14: that portion of lots 4, 5, 6 west of the centerline of Carbon County Road 401, that portion of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ west of the centerline of Carbon County Road 401; section 16: Lots 1, 2; section 17: Lots 4, 5, 6, 7, 8, 9, NW $\frac{1}{4}$ SE $\frac{1}{4}$; and section 18: Lot 19; Section 19: Lots 5, 12, 13, 16. The BLM will coordinate and cooperate with the WWDC on other resource management activities that will occur on the described public lands. The main areas of resource management concern are discussed below:

Livestock Grazing Management: The WWDC controls the state lands to which the Mexican Meadows allotment grazing permit (#493041) is attached. WWDC has constructed a new fence splitting the Mexican Meadows allotment into two pastures. The south pasture will remain as the Mexican Meadows allotment, with AUMs adjusted to the border of the new fence. A ten-year grazing permit would be reissued with annual grazing authorized by cattle for the same season of use as the previous permit. The north pasture, which contains Savery Creek and the newly created wetlands, will be combined with the lands removed from Stratton's Sandstone Ranches, Savery Creek allotment into a new allotment called High Savery. It would also contain the dam, reservoir pool area, and other facilities. Public lands and AUMs in this allotment would not be assigned in an active grazing permit. Grazing within the High Savery allotment would be on an occasional basis to meet vegetative management and objectives, rather than for livestock production. If grazing occurs, a grazing lease would be agreed upon by the WWDC and a livestock operator, with use of public lands and AUMs adhering to the WWDC lease. Grazing use would be issued on a temporary, non-renewable basis.

Mineral Resource Management: The BLM will manage the locatable, leaseable, and salable mineral resources on the subject public lands. The WWDC and BLM will coordinate very closely to manage the mineral resources to minimize conflicts between mineral development and the High Savery Dam and Reservoir Project. The BLM will get concurrence with WWDC prior to selling any salable minerals. The BLM will stipulate any leaseable mineral lease with a no surface occupancy term and condition.

Recreation Management: The BLM and WWDC will manage recreation cooperatively on the subject public lands. For public safety and protection of structures and facilities, access will be restricted to foot access. Accommodations to allow foot access and prevent unwanted vehicular traffic on public lands would be the responsibility of both the WWDC and BLM.

Water, Wetland, and Riparian Management: The WWDC will be responsible for water, wetland, and riparian management on the subject public lands as required by the Section 404 permit for the High Savery Dam and Reservoir Project. Management of these resources will be coordinated with the BLM.

ADMINISTRATION

Term of MOU: This MOU shall become effective upon signature by all participants and shall be in effect until terminated. Any party may withdraw from the MOU by giving 60 days written notice to the

other party. Parties agree to meet prior to termination of this MOU. The parties also agree to meet periodically to validate the continued need and also to discuss if any changes to the MOU are necessary.

In carrying out the activities under this MOU, the parties agree to comply with all applicable State and Federal laws.

The terms and conditions contained in right-of-way grants WYW-151861 and WYW-151862 granted April 2, 2001, to the WWDC from the BLM will take precedent over this MOU.

That nothing herein shall be construed in any way as limiting the legal authority of the BLM in connection with the proper administration and protection of all properties administered by BLM in accordance with Federal laws and regulations.

Payment: No payment shall be made to either party by the other party as a result of this MOU. Any commitments or exchange of value shall be accomplished by separate instrument.

That nothing in this MOU shall be construed as obligating the BLM or WWDC to expend funds in any contract or other obligations for future payments or services in excess of those available or authorized for expenditure.

Amendments: Either party may request changes in this MOU. Any changes, modifications, revisions, or amendments to this MOU, which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, executed, and signed by all parties to this MOU.

Entirety of MOU: This MOU, consisting of five pages, represents the entire and integrated MOU between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral (with the exception of right-of-way grants WYW-151861 and WYW-151862).

Prior Approval: This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless the Wyoming's Attorney General or his representative approves this MOU as to form.

Severability: Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

Sovereign Immunity: The U.S. Department of Interior, Bureau of Land Management, the State of Wyoming, and the Wyoming Water Development Commission do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

Third Party Beneficiary Rights: The parties do not intend to create in any other individual or entities the status of third party beneficiary and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefits of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring action for the breach of this MOU.

The Federal Government's liability shall be governed by the provisions of the Federal Tort Claims Act (28 USC 267-80). The State of Wyoming's liability shall be government by Wyoming State Stat. 1-39-101 *et seq.* and all other state law.

No member of, or delegation to, Congress or Resident Commissioner shall be admitted to any share or part of this MOU, or to any benefit that may arise there from; but this provision shall not be construed to extend to this MOU if made with a corporation for its general benefit.

Dispute Resolution: The BLM and WWDC agree to comply with this MOU and to take the following actions if the two parties are in conflict over the administration of this MOU.

- Contact, when appropriate, or meet with parties to evaluate the validity of any complaint.
- Conduct an MOU-in-hand review of the activity site within 10 days, or an agreed to time, after receiving the complaint to determine if violations had occurred.
- Evaluate the activity or project site in regards to this MOU to determine the need for any changes, amendments, modifications, or revisions to this MOU.
- Modify, amend, or revise this MOU to assure that any additional mitigation measures, deemed necessary through the MOU are implemented.
- Throughout the implementation and administration of the MOU, the participants shall comply with all Federal Statutes relating to nondiscrimination. These include but are not limited to:
- Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, handicap or national origin; and, (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex.

APPROVALS

In witness whereof, the parties to this MOU through their duly authorized representatives have executed this MOU on the days and dates set out below and certify that they have read, understood and agreed to the terms and conditions of this MOU as set forth herein.

U.S. Department of the Interior

Bureau of Land Management

Rawlins Field Office

Kurt J. Kotter, Field Manager

Date

Wyoming Water Development Commission

Lawrence M. Besson, Director

Date

APPROVAL AS TO FORM:

S. Jane Caton

Date

Senor Assistant Attorney General